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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. FIFRA-09-2009-0013
)	
Bug Bam Products, LLC)	SUPPLEMENT TO MOTION FOR
)	LEAVE TO FILE FIRST
)	AMENDED COMPLAINT
Respondent)	
)	

On November 18, 2009, Pursuant to 40 C.F.R. § 22.16(a), the United States Environmental Protection Agency, Region IX ("EPA" or "Complainant") filed a motion for leave to file a First Amended Complaint in this matter ("Motion"), as provided in 40 C.F.R. §§ 22.14(d)-(c). The Complaint alleged that Bug Bam Products, LLC ("Bug Bam") committed three violations of Section 12(a)(1)(A) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136j(a)(1)(A). In the Motion, Complainant sought leave to file a First Amended Complaint which: (1) adds a respondent, Flash Sales, Inc., ("Flash Sales") to the

Complaint, (2) includes additional grounds of why the minimum risk pesticide exemption does not apply to the alleged violations, and (3) corrects Bug Bam's address. Based upon closer review of financial information pertaining to Flash Sales, Complainant has determined that the proposed penalty in this matter should also be modestly adjusted upward to reflect the addition of Flash Sales, and therefore through this Supplement to the Motion ("Supplement") seeks to include this upward adjustment to the penalty.

This proposed penalty increase is based upon the application of the FIFRA Enforcement Response Policy dated July 2, 1990 (the "ERP"), which incorporates the statutory penalty factors provided by Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. Specifically, the ERP considers that a respondent's "size of business" is one of the primary factors in determining a penalty. See ERP, at 17-19. The ERP bases the determination of the "size of business" upon the gross revenues of the company that violated FIFRA. ERP, at 20. Complainant has now determined that, based upon the combined gross revenues of Flash Sales and Bug Bam, the "size of business" category in this matter moves from a Category III "size of business," which covers businesses with gross revenues of \$0-\$300,000, to a Category II "size of business," which covers businesses with gross revenues of \$300,001-\$1,000,000. Based upon this change to the size of business component, Complainant would propose the following revised penalty against Flash Sales, Inc. and Bug Bam:

Count 1 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))	\$5,099
Count 2 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))	\$5,099

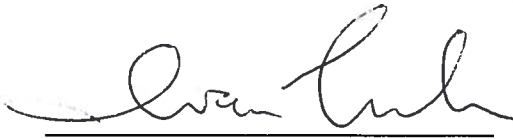
Count 3 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))	\$5,099
TOTAL (after rounding to nearest \$100)	\$15,300

This supplemental change to the Motion should be allowed based upon the same rationale set forth in the Motion. As an additional rationale, while Complainant recognizes that a higher penalty could be construed as a negative impact by Bug Bam, it is not undue prejudice because, given the early stage of the administrative proceeding, Bug Bam will have ample time to understand the rationale for the proposed penalty and respond to it. Moreover, to the extent that Flash Sales is allowed to be added as a party, the adjustment to the penalty is necessary to conform the proposed penalty to the facts and circumstances surrounding the violations and the proper application of the ERP.

For the reasons set forth herein and in the original Motion, Complainant moves the Presiding Officer to grant Complainant leave to file and serve upon the respondents, Bug Bam and Flash Sales, the First Amended Complaint attached to the Motion, as modified by this Supplement, pursuant to 40 C.F.R. § 22.14(c).

Respectfully submitted,

DATED: 11/19/09


Ivan Lieben
Assistant Regional Counsel
USEPA, Region IX

In the Matter of Bug Bam Products, LLC
Docket No. FIFRA-09-2009-0013

CERTIFICATE OF SERVICE

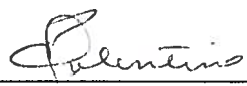
I hereby certify that the original of the foregoing Complainant's Supplement to Motion For Leave to File First Amended Complaint was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, and that a copy was faxed and sent by Pouch Mail and first class certified return receipt mail, respectively, to:

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, D.C. 20460
Facsimile: (202)565-0044

and to:

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11/19/09
Date


Corazon Tolentino
Office of Regional Counsel
U.S. EPA, Region IX